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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Jay Brill,

Plaintiff,

v.

Lawrence Transportation Company, *et al.*,

Defendants.

No. CV-17-01766-PHX-JJT

ORDER

At issue is Defendants William Smith and Lawrence Transportation Company’s Motion for Partial Summary Judgment (Doc. 70, Mot.), to which Plaintiff Jay Brill filed a Response (Doc. 73, Resp.), and Defendants filed a Reply (Doc. 77, Reply). The Court resolves Defendants’ Motion without oral argument. *See* LRCiv 7.2(f).

I. BACKGROUND

Defendant William Smith was employed as a truck driver by Defendant Lawrence Transportation Company. In the three years prior to his employment with Lawrence, Smith committed three moving violations and had two preventable accidents. Despite these incidents, representatives of Lawrence deemed him qualified for the truck driver position during the hiring process.

On February 21, 2017, Plaintiff and Smith were involved in a collision on Avenue 7E in Yuma County, Arizona. Avenue 7E is a roadway consisting of two lanes heading westbound and two lanes heading eastbound, separated by a center turn lane. At the time

1 of the collision, Smith was operating a trailer and truck in the course and scope of his
2 employment with Lawrence. While driving eastbound, Smith realized he was driving in
3 the wrong direction, and he pulled onto the shoulder of the roadway. After speaking with
4 his dispatcher and realizing he needed to drive westbound, he executed a U-turn across all
5 five lanes of Avenue 7E. At the same time, Plaintiff was heading eastbound, and his
6 motorcycle collided with Smith's trailer. According to Lawrence's company policy, Smith
7 was required to maintain logs detailing the performance of his duties and submit them at
8 the end of specified periods of time. However, the logs pertaining to this trip are
9 unaccounted for.

10 In his Complaint (Doc. 1-1 at 5-9, Compl.), Plaintiff seeks damages for injuries
11 caused by the alleged negligence of Smith and Lawrence, as well as punitive damages.
12 Lawrence now moves for partial summary judgment on Plaintiff's punitive damages claim
13 and on any direct negligence claims against it.

14 **II. LEGAL STANDARD**

15 Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is
16 appropriate when: (1) the movant shows that there is no genuine dispute as to any material
17 fact; and (2) after viewing the evidence most favorably to the non-moving party, the
18 movant is entitled to prevail as a matter of law. Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*,
19 477 U.S. 317, 322-23 (1986); *Eisenberg v. Ins. Co. of N. Am.*, 815 F.2d 1285, 1288-89 (9th
20 Cir. 1987). Under this standard, “[o]nly disputes over facts that might affect the outcome
21 of the suit under governing [substantive] law will properly preclude the entry of summary
22 judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A “genuine issue”
23 of material fact arises only “if the evidence is such that a reasonable jury could return a
24 verdict for the nonmoving party.” *Id.*

25 In considering a motion for summary judgment, the court must regard as true the
26 non-moving party's evidence, if it is supported by affidavits or other evidentiary material.
27 *Celotex*, 477 U.S. at 324; *Eisenberg*, 815 F.2d at 1289. However, the non-moving party
28 may not merely rest on its pleadings; it must produce some significant probative evidence

1 tending to contradict the moving party’s allegations, thereby creating a material question
2 of fact. *Anderson*, 477 U.S. at 256–57 (holding that the plaintiff must present affirmative
3 evidence in order to defeat a properly supported motion for summary judgment); *First Nat’l*
4 *Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 289 (1968).

5 “A summary judgment motion cannot be defeated by relying solely on conclusory
6 allegations unsupported by factual data.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.
7 1989). “Summary judgment must be entered ‘against a party who fails to make a showing
8 sufficient to establish the existence of an element essential to that party’s case, and on
9 which that party will bear the burden of proof at trial.’” *United States v. Carter*, 906 F.2d
10 1375, 1376 (9th Cir. 1990) (quoting *Celotex*, 477 U.S. at 322).

11 **III. ANALYSIS**

12 **A. Negligence Claim**

13 In his Complaint, Plaintiff raises multiple claims alleging negligence on the part of
14 both Smith and Lawrence. Although the negligence claims do not include specific theories
15 of negligence, direct liability theories such as negligent hiring, entrustment, retention,
16 training, and supervision on the part of Lawrence may be inferred. As a result, Lawrence
17 has moved for partial summary judgment as to any potential claims of negligent hiring,
18 entrustment, retention, training, and supervision that Plaintiff is raising. Lawrence admits
19 that, under the doctrine of *respondeat superior*, it is vicariously liable for Smith’s actions
20 because Smith was acting within the course and scope of his employment at the time of the
21 collision. (Mot. at 1-2.) However, Lawrence argues that, because it has conceded vicarious
22 liability, any direct liability claims are subsumed and rendered superfluous by the vicarious
23 liability claims.

24 Lawrence cites *Lewis v. Southern Pacific Company*, in which the Arizona Supreme
25 Court stated that “failure of an employer to hire only competent and experienced employees
26 does not itself constitute an independent ground of actionable negligence.” 425 P.2d 840,
27 841 (Ariz. 1967). However, since *Lewis*, Arizona has adopted new theories of joint and
28 several liability and comparative negligence. *See* A.R.S. § 12-2501. Additionally, multiple

1 subsequent cases decided by the Arizona Court of Appeals have held that the holding in
2 *Lewis*—that negligent hiring and supervision is not an independent ground of actionable
3 negligence against the employer—is limited. See *Quinonez in re Quinonez v. Andersen*,
4 696 P.2d 1342 (Ariz. Ct. App. 1984); *Pruitt v. Pavelin*, 685 P.2d 1347 (Ariz. Ct. App.
5 1984); *Kassman v. Busfield Enterprises, Inc.*, 639 P.2d 353 (Ariz. Ct. App. 1981)
6 (recognizing negligent hiring, training, and supervision as a separate cause of action against
7 an employer).

8 As a result, the Court finds that *Lewis* is not controlling in this matter and Arizona
9 law allows Plaintiff to allege direct liability claims in addition to claims of vicarious
10 liability. Because Lawrence’s Motion only challenges the legal viability of Plaintiff’s
11 negligence claim against it, the Court will deny Lawrence’s Motion for Partial Summary
12 Judgment as to Plaintiff’s direct liability claims.¹

13 **B. Punitive Damages**

14 Lawrence has also moved for partial summary judgment as to Plaintiff’s claim for
15 punitive damages. Under Arizona law, a separate cause of action does not exist for punitive
16 damages; instead, “the right to an award of punitive damages must be grounded upon a
17 cause of action for actual damages.” *Quiroga v. Allstate Ins. Co.*, 726 P.2d 224, 226 (Ariz.
18 Ct. App. 1986). Additionally, summary judgment on the question of punitive damages is
19 inappropriate if “a reasonable jury could find the requisite evil mind by clear and
20 convincing evidence.” *Thompson v. Better-Bilt Aluminum Prods. Co.*, 832 P.2d 203, 211
21 (Ariz. 1992). In determining whether a defendant exhibited an “evil mind,” courts consider
22 “the nature of the defendant’s conduct, including the reprehensibility of the conduct and
23 the severity of the harm likely to result, as well as the harm that has occurred [in addition
24 to] [t]he duration of the misconduct, the degree of defendant’s awareness of the harm or
25 risk of harm, and any concealment of it.” *Hawkins v. Allstate Ins. Co.*, 733 P.2d 1073, 1080
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27 ¹ In its Motion (Mot. at 7), Lawrence also states in passing that “Plaintiff has not
28 produced a trucking expert to give an opinion on the standard of care” for Lawrence.
However, Lawrence neither cites legal authority nor requests summary judgment on
Plaintiff’s negligence claim on this basis.

1 (Ariz. 1987). The primary question where punitive damages are concerned is motive,
2 because gross negligence and reckless disregard are not enough. *Volz v. Coleman Co.,*
3 *Inc.*, 748 P.2d 1191, 1194 (Ariz. 1987). Because defendants rarely admit to an “evil mind,”
4 improper motive is often inferred from sufficiently oppressive, outrageous, or intolerable
5 conduct. *Id.*

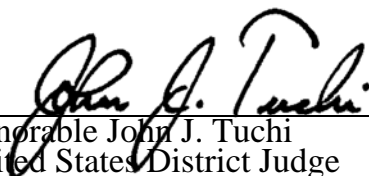
6 Here, Plaintiff has conceded that the record does not establish sufficient facts to
7 create a genuine dispute as to the imposition of punitive damages. (Resp. at 2.) The Court
8 will therefore grant Lawrence’s Motion for Partial Summary Judgment as to punitive
9 damages.²

10 **IV. CONCLUSION**

11 The Court finds that Plaintiff may bring a claim of direct liability against Lawrence
12 in addition to a claim of vicarious liability. The Court also finds that Plaintiff has failed to
13 raise a genuine issue of material fact as to his punitive damages claim.

14 **IT IS THEREFORE ORDERED** granting in part and denying in part Defendants’
15 Motion for Partial Summary Judgment (Doc. 70). The Court denies the Motion as to
16 Plaintiff’s direct negligence claims. The Court grants the Motion as to Plaintiff’s punitive
17 damages claim. This matter will be set for trial, and the Court will set a pre-trial status
18 conference by separate Order.

19 Dated this 20th day of December, 2018.

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21 
22 Honorable John J. Tuchi
23 United States District Judge

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26 ² Although Plaintiff requests that the Court defer any decision on the availability of
27 punitive damages until trial, Plaintiff was obligated, upon Lawrence’s filing of a Motion
28 for Summary Judgment, to “make a showing sufficient to establish the existence of an
element essential to that party’s case, and on which that party will bear the burden of proof
at trial.” *Celotex*, 477 U.S. at 322. Plaintiff has failed to do so, and Lawrence is thus entitled
to summary judgment on Plaintiff’s request for punitive damages.